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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 ROBERT SCHOELZEL

14 Plaintiff,

15 vs.

16 ASBESTOS DEFENDANTS, et al.

17 Defendants.

No. C 08-03113 JSW

APPENDIX OF CASES IN SUPPORT OF  
MOTION TO REMAND TO STATE  
COURT

Date: November 7, 2008

Time: 9:00 am

Court: 2, 17th Floor

18 ///

19 ///

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**FILED**

**JUN 23 2000**

**RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**LESLIE GROOMBRIDGE,**

**No. C00-01654 MMC**

**Plaintiff,**

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND; VACATING  
HEARING**

**v.**

**ASBESTOS DEFENDANTS (BHC), et al.,**

**Defendants.**

**INTRODUCTION**

Before the Court is plaintiff's motion to remand this action to state court on the grounds that the federal court lacks subject matter jurisdiction over the action. An opposition and reply have been filed. Having considered the papers submitted in support of and in opposition to the motion, the Court hereby **VACATES** the hearing scheduled for June 23, 2000, and **GRANTS** the motion.

**BACKGROUND**

On March 23, 2000, plaintiff Leslie Groombridge filed suit in San Francisco Superior Court, seeking damages for asbestos-related personal injury and disease stemming from his occupational exposure to asbestos-containing products manufactured by Rolls-Royce, PLC, formerly known as Rolls-Royce Allison and Allison Engine Company, Inc. ("Rolls-Royce"). (Compl. at 1.) On May 9, 2000, defendant removed the action to federal court pursuant to 28 U.S.C. §§ 1441, 1442, and 1446. On May 25, 2000, plaintiff filed a motion to remand.

Plaintiff alleges that he was exposed to asbestos while working as a structural

**United States District Court**

**For the Northern District of California**

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**\*\*00001**

1 mechanic/aviation officer with the United States Navy between 1956 and 1958. (Not. of  
2 Removal at 2.) Specifically, plaintiff claims that he was exposed to asbestos in the course  
3 of repairing and maintaining the T56 engines manufactured by Rolls-Royce. (Not. of  
4 Removal at 2.)

5 Although, in its notice of removal, defendant asserted multiple bases of federal  
6 jurisdiction, defendant, in its opposition, relies solely on the federal officer removal statute,  
7 28 U.S.C. § 1442. In that regard, defendant argues the Court has subject matter  
8 jurisdiction pursuant to § 1442(a)(1) for the reason that the T56 engine was manufactured  
9 by Rolls-Royce "under the authority of an officer or agency of the United States," (Not. of  
10 Removal at 3), and that the "United States Government had precise specifications, and  
11 exercised the strictest control, over the development of the T56 for its use in military  
12 aircraft." (Dft's Opp. at 3.)

## 13 DISCUSSION

### 14 A. Legal Standard

15 The existence of federal jurisdiction for removal must normally be determined on the  
16 face of the plaintiff's well-pleaded complaint. See Louisville & Nashville R.R. v. Mottley,  
17 211 U.S. 149 (1908). The federal officer removal statute provides an exception to the "well-  
18 pleaded complaint" rule. See Mesa v. California, 489 U.S. 121, 136 (1989). "Under the  
19 federal officer removal statute, suits against federal officers may be removed despite the  
20 non-federal cast of the complaint; the federal question element is met if the defense  
21 depends on federal law." Jefferson County v. Acker, 527 U.S. 423, 431 (1999).

22 To establish federal officer removal jurisdiction, the defendant must: (1) demonstrate  
23 that it acted under the direction of a federal officer; (2) raise a colorable federal defense to  
24 the plaintiff's claims; and (3) demonstrate a causal nexus between the plaintiff's claims and  
25 the acts the defendant performed under color of federal office. See Mesa, 489 U.S. at 124-  
26 25, 134-35. In addition, the defendant must be a "person" within the meaning of §  
27 1442(a)(1). See Fung v. Abex Corp., 816 F. Supp. 569, 572 (N.D. Cal. 1992).

28 The party seeking to remove an action has the burden of establishing federal

1 jurisdiction over a suit originally filed in state court. *See id.* Any doubt about the propriety of  
 2 removal is resolved in favor of remand. *See Libhart v. Santa Monica Dairy Co.*, 592 F.2d  
 3 1062, 1064 (9th Cir. 1979).

#### 4 B. Analysis

##### 5 1. "Person" Under 28 U.S.C. § 1442(a)(1)

6 Plaintiff argues that Rolls-Royce is not a "person" under § 1442(a)(1). (Pl.'s Reply at  
 7 2-3.) While federal district courts are divided on this issue, the Court agrees with those  
 8 courts that have held a corporation is a person within the meaning of § 1442(a)(1). *See*,  
 9 e.g., *Good v. Armstrong*, 914 F. Supp. 1125, 1127-28 (E.D. Pa. 1996); *Crocker v. Borden*,  
 10 852 F. Supp. 1322, 1325 (E.D. La. 1994); *Eung*, 816 F. Supp. at 572; *Ryan v. Dow*  
 11 *Chemical Co.*, 781 F. Supp. 934, 936 (E.D.N.Y. 1992). Because Rolls-Royce is a  
 12 corporation, the Court finds that it qualifies as a "person" under § 1442(a)(1).

##### 13 2. "Acting Under" a Federal Officer and "Causal Nexus"

14 To establish that a defendant is "acting under" a federal officer, a federal officer  
 15 must have had "direct and detailed control over the defendant." *Eung*, 816 F. Supp. at 572.  
 16 Further, to establish a "causal nexus," it must appear that the state prosecution has arisen  
 17 out of the acts done under color of federal authority and in enforcement of federal law.  
 18 *Maryland v. Soper*, 270 U.S. 9, 22 (1926).

19 Here, to support its contention that it was acting under the direct and detailed control  
 20 of the federal government, defendant offers the affidavit of James L. Dillard ("Dillard"), a  
 21 retired chief project engineer, and sixteen other exhibits. (*See Dillard Aff.*) The voluminous  
 22 materials, however, contain no requirement or even reference to the use of asbestos.

23 Rather, the specifications indicate defendant was permitted to use "standard parts . . .  
 24 unless they [were] determined by the contractor to be unsuitable for the purpose." (Dillard  
 25 Aff., Ex. 12 at 365.)

26 This case thus is distinguishable from cases relied upon by defendant in which the  
 27 government specified the use of asbestos. See Pack v. AC and S, Inc., 838 F. Supp. 1099,  
 28 1103 (D. Md. 1993); *Blackman v. Asbestos Defendants (BHC)*, 1997 WL 703773, \*2 (N.D.



1 Cal. 1999). See also Cabalic v. Owens-Corning Fiberglas Corp., 1994 WL 564724 (N.D.  
2 Cal. 1994) (remanding on ground that defendant failed to provide evidence that the  
3 specifications required the use of asbestos).

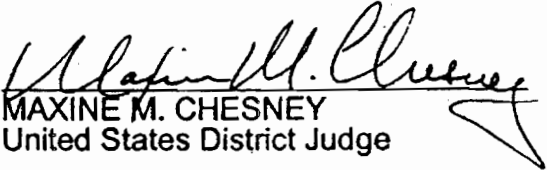
4 Accordingly, the Court finds defendant has failed to show that it acted under the  
5 direction of a federal officer in using asbestos in the design, manufacture, or testing of the  
6 T56 engine or that a causal nexus exists between any government specification and  
7 plaintiff's claimed injury. Consequently, defendant cannot rely on the federal officer  
8 removal statute as a basis for the Court's jurisdiction, and, accordingly, removal was not  
9 proper.

10 **CONCLUSION**

11 For the reasons stated, the Court GRANTS plaintiff's motion to remand.

12 **IT IS SO ORDERED.**

13 Dated: JUN 23 2000

14   
MAXINE M. CHESNEY  
United States District Judge

**FILED**

**JUN 20 2000**

**RICHARD W. WIEKING**  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**HENRY PIPPINS,**

**No. C 00-1356 WHA**

**Plaintiff,**

**v**

**ASBESTOS DEFENDANTS, et al.,**

**Defendants.**

**ORDER 1) GRANTING PLAINTIFF'S  
MOTION TO REMAND CASE TO  
STATE COURT AND 2) DENYING AS  
MOOT PLAINTIFF'S OBJECTION TO  
DEFENDANT'S SUPPLEMENTAL  
BRIEF IN OPPOSITION**

**ENTERED IN CIVIL DOCKET**

**6/20/00**

**INTRODUCTION**

The Court cannot find on the present record that defendant Rolls-Royce, PLC, during its manufacture of jet aircraft engines for the United States Air Force and Navy, included asbestos in such engines at the direction of an Air Force or Naval officer. On that basis, the Court concludes that no subject-matter jurisdiction exists under 28 USC 1442. Accordingly, the Court GRANTS plaintiff's motion to remand the action to state court. The Court also DENIES as moot plaintiff's objection to defendant's supplemental brief.

**STATEMENT**

On March 15, 2000, plaintiff Henry Pippins filed a personal injury complaint in California Superior Court. The complaint alleged, among other things, that plaintiff had been exposed to asbestos during his 36-year career as a jet engine mechanic and materials specialist.

**United States District Court**  
For the Northern District of California

**\* 00005**

1 One alleged source of such asbestos was the T56 jet engine, which defendant, formerly known as  
2 Allison Engine Co. Inc., manufactured for the Air Force and Navy.

3 Defendant removed the action to this Court, arguing that federal-question jurisdiction  
4 existed under 28 USC 1442, the federal officer removal statute, "because the action involves a  
5 person, *i.e.*, Rolls-Royce, that acted under the authority of an officer or agency of the United  
6 States" (Notice of Removal 3:5-6). Plaintiff promptly moved for remand. In opposition to  
7 plaintiff's motion, defendant proffered evidence selected to show that "the United States  
8 Government was inextricably linked to the design and production of the T56 engine, and it  
9 unequivocally directed Allison in all such phases that form the basis of Plaintiff's claims against  
10 Rolls-Royce" (Opp. 3:15-17). According to defendant, such evidence demonstrated that:

- 11 • the Air Force and Navy maintained personnel at Allison's plant for the purpose of
- 12 ensuring compliance with the government contract and specifications;
- 13 • the military specifications for the T56 were "specific, detailed and mandatory";
- 14 • the Air Force participated in the design and development of the T56, and made
- 15 recommendations for design improvements; and
- 16 • no changes to the design of the T56 could be made without government design and
- 17 approval.

#### 18 ANALYSIS

19 In this case, removal is premised upon 28 USC 1442, an exception to the well-pleaded  
20 complaint rule. *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999). "Under the federal officer  
21 removal statute, suits against federal officers may be removed despite the nonfederal cast of the  
22 complaint; the federal question element is met if the defense depends on federal law." *Ibid.* To  
23 create subject-matter jurisdiction under 28 USC 1442(a), the subsection here at issue, defendant  
24 must "(1) demonstrate that it acted under the direction of a federal officer, (2) raise a federal  
25 defense to plaintiffs' claims, and (3) demonstrate a causal nexus between plaintiffs' claims and  
26 acts it performed under color of federal office." *Fung v. Abex Corp.*, 816 F.Supp. 569, 571-72  
27 (N.D. Cal. 1992), citing *Mesa v. California*, 489 U.S. 121, 124-25, 134-35 (1989).

28



1 Application of the federal officer removal statute is not limited to cases in which the  
2 defendant demonstrates upon removal the meritoriousness of his or her alleged defense. "At the  
3 very least, it is broad enough to cover all cases where federal officers can raise a colorable  
4 defense arising out of their duty to enforce federal law." *Willingham v. Morgan*, 395 U.S. 402,  
5 406-07 (1969). *See also Jefferson County*, 527 U.S. at 532 (reasoning that federal officer  
6 removal statute does not require the federal officer to demonstrate "an airtight case on the  
7 merits"). As in all removal scenarios, however, "[t]he burden of establishing federal jurisdiction  
8 is on the party seeking removal." *Prize Frize, Inc. v. Matrix (U.S.) Inc.*, 167 F.3d 1261, 1265  
9 (9th Cir. 1999). Accordingly, the Court will remand the action unless defendant demonstrably  
10 has satisfied each of the three above-listed conditions.

11 \* \* \*

12 As discussed above, defendant argues that it designed and manufactured the T56 "under  
13 the authority" of an officer of the United States. Hence, defendant concludes that it is entitled to  
14 removal. The Court disagrees, based upon defendant's failure to demonstrate that an officer of  
15 the United States directed it to perform those acts that plaintiff alleges to have harmed him.

16 In its briefs and at oral argument, defendant emphasized that it designed and  
17 manufactured the T56 under tight government supervision, that the engine was built to tight  
18 specifications, and that such specifications were subject to change only upon government  
19 approval. That "the relevant acts occurred under the general auspices of federal direction",  
20 however, is not enough to warrant removal. *Good v. Armstrong World Industries, Inc.*, 914  
21 F.Supp. 1125, 1128 (E.D. Pa. 1996), citing *Fung*, 816 F.Supp. at 572. Instead, a defendant  
22 seeking removal must demonstrate that it acted "according to the direct and detailed control of  
23 an officer of the United States." *Good*, 914 F.Supp. at 1128. With respect to products liability,  
24 that usually entails demonstrating "strong government intervention and the threat that a  
25 defendant will be sued in state court 'based upon actions taken pursuant to federal direction.'"  
26 *Fung*, 816 F.Supp. at 572, quoting *Gulati v. Zuckerman*, 723 F.Supp. 353 (E.D. Pa. 1989).

27 Plaintiff alleges exposure to asbestos. If defendant's argument is to succeed, defendant  
28 must demonstrate a causal nexus between such exposure and acts performed by defendant

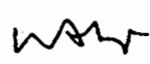
1 pursuant to the direction of some federal officer. This defendant cannot do. In the volume of  
2 documents submitted by defendant and describing the oversight of the United States government  
3 during the design and manufacturing of the T56, the word "asbestos" appears not once. Nor  
4 during oral argument could defendant name a single asbestos-containing part that the  
5 government directed it to incorporate into the engine. This is not a case where the government  
6 "would specify and approve the type of asbestos" integrated into the object of manufacture.  
7 Pack v. AC and S, Inc., 838 F.Supp. 1099, 1103 (D. Md. 1993). Nor is it a case in which the  
8 government's "drawings and specifications required the use of asbestos materials." Blackman v.  
9 Asbestos Defendants (BHC), No. C-97-3066, 1997 WL 703773, at \*2 (N.D. Calif. Nov. 3, 1997).  
10 Rather, this is a case in which defendant was permitted to use "standard parts . . . unless they  
11 [were] determined by the contractor to be unsuitable for the purpose" (Dillard Decl., Exh. 12 at  
12 365). Defendant thus was free to use whatever standard parts it believed appropriate. No causal  
13 relationship has been shown between defendant's alleged choice of asbestos and the  
14 government's actual orders to defendant. Hence, plaintiff's motion to remand should be granted.

#### 15 CONCLUSION

16 For the reasons stated above, plaintiff's motion is GRANTED. Furthermore, plaintiff's  
17 objection to defendant's supplemental opposition is DENIED as MOOT.

18  
19 IT IS SO ORDERED.

20  
21 Dated: June 20, 2000

22   
23 WILLIAM ALSUP  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28

# 00008

E-filing

United States District Court  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS PIPPINS and  
TOMMIE PIPPINS,

No. C 03-3006 WHA

Plaintiffs,

**ORDER GRANTING PLAINTIFFS'  
MOTION TO REMAND**

v.

ATLAS TURNER, INC., *et al.*,

Defendants.

**INTRODUCTION**

In this personal-injury case, defendant Northrop Grumman Corporation has failed to show that it was "acting under" a federal officer when it used asbestos materials in the design of Cougar airplanes for the United States Navy. Removal jurisdiction, therefore, is lacking under 28 U.S.C. 1442(a)(1). Plaintiffs' motion to remand the action is **GRANTED**.

**STATEMENT**

On September 27, 2002, plaintiffs Mr. and Mrs. Pippins filed an action in state court for personal injuries Mr. Pippins purportedly sustained from asbestos exposure while working as an aviation mechanic on F9F Cougar airplanes at a naval air station in Kansas. The airplanes were manufactured for the Navy by Grumman Aircraft Engineering Corporation, later acquired by defendant Northrop Grumman Corporation. The complaint alleges that, while servicing the aircrafts, Mr. Pippins was exposed to asbestos through the airplanes' brake linings and from asbestos tape and asbestos heat shield insulation (Dep. 92). Although companies other than defendant made all these asbestos-containing components, defendant

00009

1 incorporated them into the airplanes.

2 Defendant removed the action under 28 U.S.C. 1442(a)(1). Defendant contends that it was acting  
3 under the government's control when it designed the Cougar aircraft. According to defendant, the  
4 government reviewed and approved defendant's design plans and drawings and its contract included  
5 detailed specifications on the design of the Cougar. Plaintiffs have now moved for remand.

#### 6 ANALYSIS

7 This case involves the federal-officer removal statute, which allows removal of a state action against  
8 "any officer (or any person *acting under* that officer) of the United States or of any agency thereof, sued in  
9 an official or individual capacity for any act under color of such office . . . ." 28 U.S.C. 1442(a)(1)

10 (emphasis added). To show it was "acting under" a federal officer, a removing party must:

11 (1) demonstrate that it acted under the direction of a federal officer; (2) raise a federal defense to the  
12 plaintiff's claims; and (3) demonstrate a causal nexus between the plaintiff's claims and acts it performed  
13 under color of federal office. *Fung v. Abex Corp.*, 816 F. Supp. 569, 571-72 (N.D. Cal. 1992) (citation  
14 omitted). The burden of establishing federal jurisdiction is on the party seeking removal. *Prize Frize, Inc.*  
15 *v. Matrix, Inc.*, 167 F.3d 1261, 1265 (9th Cir. 1999). Accordingly, the action should be remanded unless  
16 defendant has satisfied each of the three conditions mentioned above.

17 \* \* \*

18 As this Court has noted before in a similar decision involving the brother of Mr. Pippins, a mere  
19 showing that "the relevant acts occurred under the general auspices of federal direction" is not by itself  
20 enough to warrant removal. *Pippins v. Asbestos Defendants*, No. 00-1356 at 3 (N.D. Cal. Jun. 20,  
21 2000) (citation omitted). Rather, a defendant seeking removal must demonstrate that it acted "according to  
22 the direct and detailed control" of a federal officer. *Ibid.*

23 Here, the only instance, at least at the initial design stage, where the Navy may have controlled the  
24 choice of Cougar parts was when it specified the Pratt & Whitney J48-P-8A engine to be incorporated.  
25 Otherwise, Northrop Grumman was free to submit whatever design it wished. Only upon acceptance by  
26 the Navy did the rest of the design become "government-specified." Mr. Pippins, however, allegedly  
27 suffered asbestos exposure not from the engine itself, but from the frequently replaced asbestos insulation  
28 shields wrapped around the engine, among other things. Hence, to establish that removal was proper



1 defendant must demonstrate that the Navy directed it to include asbestos materials in the original design.  
2 No such showing has been made.

3 Defendant, and not the Navy, furnished the design data and drawings of the aircraft as part of its  
4 contracted services (Oberg Exh. 1 at 1). Defendant was responsible for purchasing its own "materials,  
5 supplies and subassemblies" and accounting thereafter for the cost of those items (DeBois Exh. 1 at 3).  
6 There is no indication that the Navy had any hand in the selection of any asbestos materials. In this respect,  
7 defendant has not even shown that the Navy's specifications (after acceptance of the Cougar design)  
8 required the use of asbestos materials. In all the documents relating to the Cougar's design, the word  
9 "asbestos" appears not once. See *Groombridge v. Asbestos Defendants*, No. 00-01654 at 3 (N.D. Cal.  
10 Jun. 23, 2000) (Chesney, J.) (remanding because the defendants failed to submit any materials which  
11 required or even referenced asbestos). Instead, defendant's evidence only shows that the Navy directed it  
12 to manufacture the Cougar aircraft, and that the Navy "routinely specified" that asbestos materials be used  
13 in its aircraft (DeBois Decl. ¶ 15). No evidence is provided that the Navy specifically required the asbestos  
14 materials in the brake linings and engine insulation. These parts needed frequent servicing, and in a manner  
15 which created the asbestos dust that Mr. Pippins inhaled.

16 As such, this case is distinguishable from *Fung v. Abex Corp.*, 816 F. Supp. 569, 572-73 (N.D.  
17 Cal. 1992), where the court found that the defendant company was acting under federal control when it  
18 built submarines for the Navy under extensive guidance. In *Fung*, the defendant company was employed  
19 to construct Navy submarines according to the Navy's clear specifications in Navy shipyards, where the  
20 Navy "monitored [the defendant's] performance at all times." *Id.* at 571, 573. This case, in comparison,  
21 does not involve a situation of such direct government control. Unlike the defendant in *Fung*, the record  
22 here shows that Northrop Grumman retained significant independent decision-making authority as to the  
23 design of the Cougar airplane.

24 Neither does *Willingham v. Morgan*, 395 U.S. 402 (1969), sustain removal here.<sup>1</sup> In that case,  
25 the Supreme Court held that federal prison officials had met the "causal connection" requirement for  
26 removal by showing that they "were on duty, at their place of federal employment, at all the relevant times"

27  
28 <sup>1</sup> On September 8, 2003, defendant filed a motion for leave to file a sur-reply. The motion for leave is GRANTED. The sur-reply was duly considered.



1 when they allegedly abused the plaintiff prisoner in the process of designing airplanes for the Navy. *Id.* at  
2 409. Applied here, defendant argues that it need not show that the Navy specifically ordered that asbestos  
3 materials be installed into the airplanes. Instead, defendant contends that the Navy's extensive *general*  
4 control of the Cougar's design and maintenance is enough for removal.

5 None of the considerations urging removal in *Willingham* urge removal here. The *Willingham*  
6 defendants were federal officers raising the defense of official immunity, and were being sued for acts done  
7 on federal property in order to enforce federal law. A main purpose of Section 1442(a)(1) is to allow  
8 federal officers to effectively enforce federal law. *Id.* at 406-07. In contrast, defendant here is a private  
9 corporation. Its alleged acts occurred on its own property and in fulfillment of a for-profit contract with the  
10 Navy. Many courts, moreover, have refused to extend *Willingham's* holding outside the law enforcement  
11 context. *See, e.g., Mesa v. California*, 489 U.S. 121, 133, 138 (1989) (refusing to allow removal where  
12 the plaintiffs were federal postal workers charged with criminal driving violations while on duty).

13 The removal point, then, boils down to whether a defendant is entitled to removal for an act that  
14 was not specifically ordered by the Navy, but was done in the course of fulfilling the Navy's request for  
15 airplanes. For the reasons stated, this order holds that such a generalized removal theory as used by  
16 defendant would open the floodgates. This Court construes removal jurisdiction under Section 1442(a)(1)  
17 more narrowly.

#### 18 CONCLUSION

19 This order finds that defendant has not sustained its burden of showing a basis for removal.  
20 Accordingly, plaintiffs' motion to remand is **GRANTED**. The Clerk will return this case to the state court.  
21 Since defendant had a colorable basis for asserting that removal was proper, this order **DENIES** plaintiffs'  
22 request for an award of attorney's fees and costs.

23  
24 **IT IS SO ORDERED.**

25  
26 Dated: September 23, 2003.

27 /s/ William Alsup  
28 WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

**Other Orders/Judgments**3:03-cv-03006 Pippins et al v. Atlas Turner Inc. et al

U.S. District Court  
Northern District of California  
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**Docket Text:**

ORDER GRANTING PLAINTIFFS' MOTION TO REMAND re [12], [13], [27]. Signed by Judge William Alsup on 9/23/03. (kyy)

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00014

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

THOMAS PIPPINS,  
Plaintiff,

Case Number: CV03-03006 WHA

**CERTIFICATE OF SERVICE**

v.

ATLAS TURNER,  
Defendant.

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 24, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

David R. Donadio  
Brayton & Purcell  
222 Rush Landing Road  
Novato, CA 94948-6169

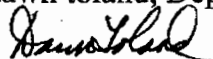
Laura Patricia Yee  
Tucker Ellis & West  
555 California Street  
Suite 3130  
San Francisco, CA 94104

Lillian C. Ma  
Tucker Ellis & West LLP  
555 California Street  
Suite 3130  
San Francisco, CA 94104-1607

Robert E. Boone III  
Bryan Cave LLP  
120 Broadway  
Suite 300  
Santa Monica, CA 90401

Dated: September 24, 2003.

Richard W. Wieking, Clerk  
By: dawn toland, Deputy Clerk



00015

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 222 Rush Landing Road, Novato, California 94948-6169.

On August 22, 2008 I served the attached:

**ADDENDUM IN SUPPORT PLAINTIFF'S MOTION TO REMAND CASE TO STATE COURT**

**Robert Schoelzel, v. Asbestos Defendants, et al.**

**USDC C-8-03113 JSW**

on the interested parties in this action by transmitting a true copy thereof in a sealed envelope, and each envelope addressed as follows:


**TO ALL PARTIES ON THE ATTACHED SERVICE LIST**

XXX

BY OFFICE MAILING: I am readily familiar with this office's practice of collection and processing correspondence, pleadings and other matters for mailing with the United States Postal Service on that same day with postage thereon fully prepaid at Novato, California in the ordinary course of business. I placed in the outgoing office mail, the above-described document(s), in a sealed envelope, addressed to the party(ies) as stated above, for collection and processing for mailing the same day in accordance with ordinary office practices.

Executed this August 22, 2008 at Novato, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
JANE A. EHNI

BRAYTON PURCELL  
ATTORNEYS AT LAW  
222 RUSH LANDING ROAD  
NOVATO, CALIFORNIA 94945  
(415) 898-1555



Date Created: 8/22/2008-4:46:28 PM

Created by: LitSupport - ServiceList - Live

Matter Number: 105358.001 - Robert Schoelzel

Run By : Ehni, Jane (JAE)

**Berry & Berry**

P.O. Box 16070

2930 Lakeshore Avenue

Oakland, CA 94610

510-835-8330 510-835-5117 (fax)

**Defendants:**

Berry &amp; Berry (B&amp;B)

**Bowman and Brooke LLP**879 West 190<sup>th</sup> Street

Suite 700

Gardena, CA 90248-4227

310-768-3068 310-719-1019 (fax)

**Defendants:**

Ford Motor Company (FORD)

General Motors Corporation (GM)

**Brydon Hugo & Parker**135 Main Street, 20<sup>th</sup> Floor

San Francisco, CA 94105

415-808-0300 415-808-0333 (fax)

**Defendants:**

Foster Wheeler LLC (FKA Foster Wheeler Corporation) (FOSTER)

**Burnham & Brown**

1901 Harrison Street

11<sup>th</sup> Floor

Oakland, CA 94612

510-444-6800 510-835-6666 (fax)

**Defendants:**

Borg-Warner Corporation by its Successor in Interest, Borg Warner Morse TEC Inc. (BWMORS)

**Carroll, Burdick & McDonough**

Asbestos Case Coordinator

44 Montgomery Street, Ste. 400

San Francisco, CA 94104

415-989-5900 415-989-0932 (fax)

**Defendants:**

Warren Pumps, LLC (WARPUM)

**Gordon & Rees LLP**

Embarcadero Center West

275 Battery Street, 20<sup>th</sup> Floor

San Francisco, CA 94111

415-986-5900 415-986-8054 (fax)

**Defendants:**Ingersoll-Rand Company (INGRSL)  
Leslie Controls, Inc. (LESCON)**Howard Rome Martin & Ridley**

1775 Woodside Road, Suite 200

Redwood City, CA 94061

650-365-7715 650-364-5297 (fax)

**Defendants:**

IMO Industries, Inc. (IMOIND)

**Jackson & Wallace**

55 Francisco Street

Sixth Floor

San Francisco, CA 94133

415-982-6300 415-982-6700 (fax)

**Defendants:**

BW/IP International Inc. (BWIPIN)

**Kirkpatrick & Lockhart Preston Gates Ellis LLP**

55 Second Street

Suite 1700

San Francisco, CA 94105

415-882-8200 415-882-8220 (fax)

**Defendants:**

Crane Co. (CRANCO)

**Knox Ricksen LLP**

1300 Clay Street, Suite 500

Oakland, CA 94612-1427

510-285-2500 510-285-2505 (fax)

**Defendants:**

Allis-Chalmers Corporation Product Liability Trust (ALLIS)

**Law Offices of Glaspy & Glaspy**

One Walnut Creek Center

100 Pringle Avenue, Suite 750

Walnut Creek, CA 94596

925-947-1300 925-947-1594 (fax)

**Defendants:**

Steege Corporation (STGCOR)

**Law Offices of Nancy E. Hudgins**565 Commercial, 4<sup>th</sup> Floor

San Francisco, CA 94111

415-979-0100 415-979-0747 (fax)

**Defendants:**

Uniroyal Holding, Inc. (UNIROY)

**Law Offices of Peter C. Freeman**

16485 Laguna Canyon Road, Ste. 230

Irvine, CA 92618

949-341-0500 949-341-0505 (fax)

**Defendants:**

Barr Lumber Company, Inc. (BARRLU)

**McKenna Long & Aldridge**

101 California Street

41<sup>st</sup> Floor

San Francisco, CA 94111

415-267-4000 415-267-4198 (fax)

**Defendants:**

Certainteed Corporation (CERT)

**Morgan, Lewis & Bockius LLP**

One Market, Spear Tower

San Francisco, CA 94105

415-442-1000 415-442-1001 (fax)

**Defendants:**

Grinnell Corporation (GRINN)

**Perkins Cole LLP**

Four Embarcadero Center, Suite 2400

San Francisco, CA 94111

415-344-7000 415-344-7288 (fax)

**Defendants:**

Georgia-Pacific Corporation (GP)

Honeywell International, Inc. (HONEYW)

**Pond North, LLP**

350 South Grand Avenue, Suite 2850

Los Angeles, CA 90071

213-617-6170 213-623-3594 (fax)

**Defendants:**

Viacom, Inc. (VIACOM)

**Sedgwick, Detert, Moran & Arnold**

One Market Plaza

Steuart Tower, 8<sup>th</sup> Floor

San Francisco, CA 94105

415-781-7900 415-781-2635 (fax)

**Defendants:**

General Electric Company (GE)

**Sonnenschein Nath & Rosenthal, LLP**525 Market Street, 26<sup>th</sup> Floor

San Francisco, CA 94105-2708

415-882-5000 415-882-0300 (fax)

**Defendants:**

Rapid-American Corporation (RAPID)

**Tucker Ellis & West LLP**

135 Main Street, Suite 700

San Francisco, CA 94105

415-617-2400 415-617-2409 (fax)

**Defendants:**

Carrier Corporation (CARRCP)

**Walsworth, Franklin, Bevins & McCall**601 Montgomery Street, 9<sup>th</sup> Floor

San Francisco, CA 94111

415-781-7072 415-391-6258 (fax)

**Defendants:**

Thomas Dee Engineering Co., Inc. (DEE)

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 222 Rush Landing Road, P.O. Box 6169, Novato, California 94948-6169.

On August 25, 2008, I served the following document(s) described as:

**APPENDIX OF CASES IN SUPPORT OF MOTION TO REMAND TO STATE COURT**

**Robert Schoelzel v. Asbestos Defendants, et al.  
USDC No. C08-03113 JSW**

on the interested party(ies) in this action as follows:

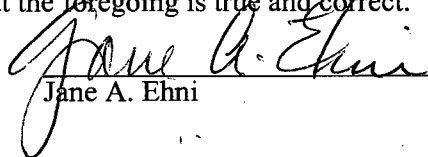
**TO ALL PARTIES ON THE ATTACHED SERVICE LIST**

— BY PERSONAL MAILING: I deposited in the U.S. Mail at Novato, California, the above-described document(s), in a sealed envelope, with postage fully prepaid, addressed to the party(ies) as stated above.

XX BY OFFICE MAILING: I am readily familiar with this office's practice of collection and processing correspondence, pleadings and other matters for mailing with the United States Postal Service on that same day with postage thereon fully prepaid at Novato, California in the ordinary course of business. I placed in the outgoing office mail, the above-described document(s), in a sealed envelope, addressed to the party(ies) as stated above, for collection and processing for mailing the same day in accordance with ordinary office practices.

Executed this 25th day of August, 2008, at Novato, California.

I declare under penalty of perjury that the foregoing is true and correct.

  
Jane A. Ehni

BRAYTON ♦ PURCELL LLP  
ATTORNEYS AT LAW  
222 RUSH LANDING ROAD  
P O BOX 6169  
NOVATO, CALIFORNIA 94948-6169  
(415) 898-1555

Date Created: 8/25/2008-2:29:28 PM  
Created by: LitSupport - ServiceList - Live  
Matter Number: 105358.001 - Robert Schoelzel

Run By : Ehni, Jane (JAE)

**Berry & Berry**  
P.O. Box 16070  
2930 Lakeshore Avenue  
Oakland, CA 94610  
510-835-8330 510-835-5117 (fax)  
**Defendants:**  
Berry & Berry (B&B)

**Bowman and Brooke LLP**  
879 West 190<sup>th</sup> Street  
Suite 700  
Gardena, CA 90248-4227  
310-768-3068 310-719-1019 (fax)  
**Defendants:**  
Ford Motor Company (FORD)  
General Motors Corporation (GM)

**Brydon Hugo & Parker**  
135 Main Street, 20<sup>th</sup> Floor  
San Francisco, CA 94105  
415-808-0300 415-808-0333 (fax)  
**Defendants:**  
Foster Wheeler LLC (FKA Foster Wheeler Corporation) (FOSTER)

**Burnham & Brown**  
1901 Harrison Street  
11<sup>th</sup> Floor  
Oakland, CA 94612  
510-444-6800 510-835-6666 (fax)  
**Defendants:**  
Borg-Warner Corporation by its Successor in Interest, Borg Warner Morse TEC Inc. (BWMORS)

**Carroll, Burdick & McDonough**  
Asbestos Case Coordinator  
44 Montgomery Street, Ste. 400  
San Francisco, CA 94104  
415-989-5900 415-989-0932 (fax)  
**Defendants:**  
Warren Pumps, LLC (WARPUM)

**Gordon & Rees LLP**  
Embarcadero Center West  
275 Battery Street, 20<sup>th</sup> Floor  
San Francisco, CA 94111  
415-986-5900 415-986-8054 (fax)  
**Defendants:**  
Ingersoll-Rand Company (INGRSL)  
Leslie Controls, Inc. (LESCON)

**Howard Rome Martin & Ridley**  
1775 Woodside Road, Suite 200  
Redwood City, CA 94061  
650-365-7715 650-364-5297 (fax)  
**Defendants:**  
IMO Industries, Inc. (IMOIND)

**Jackson & Wallace**  
55 Francisco Street  
Sixth Floor  
San Francisco, CA 94133  
415-982-6300 415-982-6700 (fax)  
**Defendants:**  
BW/IP International Inc. (BWIPIN)

**Kirkpatrick & Lockhart Preston Gates Ellis LLP**  
55 Second Street  
Suite 1700  
San Francisco, CA 94105  
415-882-8200 415-882-8220 (fax)  
**Defendants:**  
Crane Co. (CRANCO)

**Knox Rickson LLP**  
1300 Clay Street, Suite 500  
Oakland, CA 94612-1427  
510-285-2500 510-285-2505 (fax)  
**Defendants:**  
Allis-Chalmers Corporation Product Liability Trust (ALLIS)

**Law Offices of Glaspy & Glaspy**  
One Walnut Creek Center  
100 Pringle Avenue, Suite 750  
Walnut Creek, CA 94596  
925-947-1300 925-947-1594 (fax)  
**Defendants:**  
Steego Corporation (STGCOR)

**Law Offices of Nancy E. Hudgins**  
565 Commercial, 4<sup>th</sup> Floor  
San Francisco, CA 94111  
415-979-0100 415-979-0747 (fax)  
**Defendants:**  
Uniroyal Holding, Inc. (UNIROY)

**Law Offices of Peter C. Freeman**  
16485 Laguna Canyon Road, Ste. 230  
Irvine, CA 92618  
949-341-0500 949-341-0505 (fax)  
**Defendants:**  
Barr Lumber Company, Inc. (BARRLU)

**McKenna Long & Aldridge**  
101 California Street  
41<sup>st</sup> Floor  
San Francisco, CA 94111  
415-267-4000 415-267-4198 (fax)  
**Defendants:**  
Certainteed Corporation (CERT)

**Morgan, Lewis & Bockius LLP**  
One Market, Spear Tower  
San Francisco, CA 94105  
415-442-1000 415-442-1001 (fax)  
**Defendants:**  
Grinnell Corporation (GRINN)

**Perkins Coie LLP**  
Four Embarcadero Center, Suite 2400  
San Francisco, CA 94111  
415-344-7000 415-344-7288 (fax)  
**Defendants:**  
Georgia-Pacific Corporation (GP)  
Honeywell International, Inc. (HONEYW)

**Pond North, LLP**  
350 South Grand Avenue, Suite 2850  
Los Angeles, CA 90071  
213-617-6170 213-623-3594 (fax)  
**Defendants:**  
Viacom, Inc. (VIACOM)

**Sedgwick, Detert, Moran & Arnold**  
One Market Plaza  
Steuart Tower, 8<sup>th</sup> Floor  
San Francisco, CA 94105  
415-781-7900 415-781-2635 (fax)  
**Defendants:**  
General Electric Company (GE)

**Sonnenschein Nath & Rosenthal, LLP**  
525 Market Street, 26<sup>th</sup> Floor  
San Francisco, CA 94105-2708  
415-882-5000 415-882-0300 (fax)  
**Defendants:**  
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**Tucker Ellis & West LLP**  
135 Main Street, Suite 700  
San Francisco, CA 94105  
415-617-2400 415-617-2409 (fax)  
**Defendants:**  
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**Walsworth, Franklin, Bevins & McCall**  
601 Montgomery Street, 9<sup>th</sup> Floor  
San Francisco, CA 94111  
415-781-7072 415-391-6258 (fax)  
**Defendants:**  
Thomas Dee Engineering Co., Inc. (DEE)